

PART IV

THE DEBTOR: DUTIES AND BENEFITS

4001-1 *Automatic Stay - Relief from*

- a. **Procedure.** Procedure for prosecuting and responding to a request for relief from the stay is controlled by a Notice of Preliminary Hearing and Prehearing Order issued by the Clerk after the filing of the motion. *See* Appendix I for a sample Notice.
- b. **Preliminary Hearing.** All motions for relief from the stay which are set in the Nashville Division for preliminary hearing on a particular day will be called in Courtroom One, Second Floor Customs House, 701 Broadway, at 8:30 A.M. for announcements.
- c. **Continuance of Preliminary Hearing.** The agreement of all parties to continue the preliminary hearing of a request for relief from the stay excuses the attendance of counsel if a joint motion and agreed order to continue are filed before Noon on the third business day prior to the preliminary hearing. Otherwise, announcement of an agreement to continue may be made by counsel at the 8:30 A.M. call of the preliminary hearing docket if a joint motion and agreed order are filed no later than Noon of the third business day after the preliminary hearing. Agreed orders continuing the preliminary hearing of a request for relief from the stay shall specify the date and time of the continued hearing, shall continue the stay in effect and include a certificate of service consistent with LBR 9013-3.
- d. **Agreed Order Resolving Request for Stay Relief.** An agreed order resolving the merits of a request for relief from the stay excuses the attendance of counsel at a preliminary or final hearing if the parties comply with the notice requirements of FED. R. BANKR. P. 4001(d), and:
 - (1) the agreed order is filed no later than five days after the preliminary hearing; or,
 - (2) the agreed order is filed before Noon of the third business day prior to a final hearing.

4002-1 *Debtor - Duties*

- a. **Persons to Act When Debtor Is Not Natural Person.** The natural persons occupying the following positions shall perform all acts required to be performed by the debtor and shall attend on behalf of the debtor any examinations, meetings or hearings unless the Court orders otherwise:

- (1) If the debtor is a corporation, the person serving as its chief executive officer (the person occupying the position of president is presumed to be chief executive officer);
 - (2) If the debtor is a partnership, each of the general partners.
- b. **Motions to Designate.** If any corporate or partnership debtor deems the persons designated above inappropriate, prompt motion shall be made consistent with LBR 9013-1 for relief from this rule and for the designation of some other or additional natural person or persons.
- c. **Names and Addresses of Designated Persons.** No later than fifteen (15) days after entry of the order for relief, the natural person or persons who will perform acts required to be performed by the debtor shall be identified by name, title and address.

4004-1 *Discharge Hearings*

- a. **Discharge Hearings.** In all Chapter 7, 12 and 13 cases in which the debtor is an individual, the debtor shall attend the showing of a videotape at the meeting of creditors docket.
- b. **Discharge Affidavit.** If the meeting of creditors has been conducted other than in person, in lieu of attending the showing of a videotape, the debtor's attorney may file a discharge affidavit in the form of Appendix E.

4070-1 *Insurance*

- a. **Proof of Insurance.** When the debtor retains a motor vehicle which is subject to the lien of a creditor holding an allowed secured claim, proof of insurance against physical damage and loss must be furnished to the trustee and the creditor at or before the 11 U.S.C. § 341 meeting. Failure to furnish proof of insurance shall be presumed to mean no insurance is in effect. The proof of insurance must state that coverage will continue for at least sixty (60) days from the date of the 11 U.S.C. § 341 meeting. On or before the date the insurance coverage lapses, proof of renewal or new insurance coverage must be provided to the trustee and the creditor.
- b. **Definitions.**
- (1) “**Motor Vehicle**” shall include every item of transportation which is subject to registration pursuant to TENN. CODE ANN. § 55-3-101; provided, however, that the items of transportation excluded from the registration requirements in TENN. CODE ANN. §§ 55-3-101(a)(1) through (7) are not excluded for purposes of this rule.

- (2) “**Proof of Insurance**” shall mean a certificate of insurance or such other written evidence of sufficient reliability from the insurance carrier stating the amounts and types of coverage, a notation of the secured party as loss payee, and the time period for which coverage exists.

c. **Lapse of Insurance.** If during the pendency of a case, insurance lapses on any motor vehicle subject to the provisions of this rule:

- (1) A creditor with an allowed claim secured by the motor vehicle shall notify, in writing, the debtor and the debtor’s attorney of the lapse of insurance. Service of the notice shall be in the manner specified in FED. R. BANKR. P. 7004(b)(9).
- (2) The debtor shall be enjoined from using the motor vehicle as long as the motor vehicle remains uninsured.
- (3) If the debtor fails to provide proof of re-insurance to the creditor within three (3) business days following delivery of the notice of lapse, the debtor shall surrender the motor vehicle to the creditor or the creditor may take possession of the motor vehicle securing its claim and hold the same pending proof of insurance by the debtor. For purposes of this rule, delivery of notice is deemed complete three (3) days after mailing.
- (4) Within five (5) days after taking possession of a motor vehicle based on lapse of insurance, the creditor shall file a motion for relief from the stay of 11 U.S.C. § 362.

d. **Second Lapse of Insurance.** In the event insurance on a motor vehicle subject to this rule lapses twice during the pendency of a case, the Court may, upon the filing of a motion accompanied by an affidavit evidencing compliance by the creditor with this rule and evidencing the previous lapse of insurance, grant the creditor relief, including relief from the stay of 11 U.S.C. § 362, without further hearing. The creditor shall include a proposed order granting the requested relief.